

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Shahid M. Karim

Case Number: 14-00632

vs.

Respondents  
Citi Bank, NA  
Citigroup Global Markets, Inc.

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person vs. Member and Non-Member

**REPRESENTATION OF PARTIES**

Claimant Shahid M. Karim ("Claimant"): Lottie Cohen, Esq., Law Offices of Lottie Cohen, Los Angeles, California.

Respondents Citi Bank, NA and Citigroup Global Markets, Inc., hereinafter collectively referred to as "Respondents": Benjamin A. Tulis, Esq. and Theresa M. Marchlewski, Esq., Jackson Lewis P.C., Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 14, 2014.

Claimant signed the Submission Agreement: February 7, 2014.

Statement of Answer filed by Respondents on or about: May 19, 2014.

Respondent Citi Bank, NA signed the Submission Agreement: May 30, 2014.

Respondent Citigroup Global Markets, Inc. signed the Submission Agreement: May 30, 2014.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) adverse employment actions of demotion and termination in violation of public policy; 2) wrongful demotion; 3) wrongful termination; 4) failure to accommodate disability; 5) failure to accommodate religious practice; 6) retaliation; 7) breach of contract; 8) breach of implied covenant of good faith and fair dealing; 9) intentional interference with economic advantages, prospective business opportunities, prospective benefits; 10) defamation, slander and libel; 11) violation of Labor Code sections 1050 to 1054; and 12) intentional or negligent infliction

of emotional distress. Claimant's causes of action relate to his previous employment with Respondents.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Unpaid back pay, with an average annual salary of \$100,000.00;
2. Reinstatement of job, location, title, salary and benefits. Or in lieu of reinstatement, monetary damages in the amount of \$2,000,000.00;
3. Disability insurance or the equivalent value of the coverage, which would be \$2,500,000.00;
4. \$500,000.00 in damages for loss of reputation resulting from defamation;
5. Expungement of the U-5 reason for termination;
6. \$2,000,000.00 in tort damages for discrimination, demotion, lack of good faith and fair dealing;
7. Punitive damages and exemplary damages in the amount of \$2,000,000.00;
8. Damages for tortious interference with business and prospective business opportunities in the amount \$600,000.00;
9. Reinstatement to employment with Respondent Citibank;
10. Treble damages in accordance with Labor Code sections 1050, et seq;
11. Prejudgment interest to the extent allowed by law;
12. Costs of suit incurred herein, including attorneys' fees, expert witness fees, witness fees, and other litigation costs; and
13. Such other and further relief as the Arbitrators deem just and proper.

Respondents requested:

1. Claimant take nothing herein;
2. Reasonable attorneys' fees pursuant to California Government Code section 12965;
3. Costs of suit herein; and
4. Such other and further relief as the Panel deems just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **FINDINGS**

Shahid Karim's ("Karim") claims against Respondents, Citi Bank N.A and Citigroup Global Markets, Inc. (hereinafter collectively "Citi") include Breach of Contract, Wrongful Termination and/or Demotion, Failure to Accommodate Religious Practices and/or Disability, Retaliation, Libel and Slander, Intentional Interference with Prospective

Business Advantage, Intentional and Negligent Infliction of Emotional Distress and “Blacklisting” in violation of the California Labor Code. The gravamen of Karim’s claim is that he was demoted and then subsequently terminated without good cause and/or for unlawful reasons on or about April 29, 2010 after he returned from a disability leave of absence. Karim claims that as a result of Citi’s wrongdoing he has suffered damages in excess of \$1,000,000, not including the punitive damages he seeks to recover. He further requests that his U-5 be expunged of the reason Citi gave for his termination.

Preliminarily, on Citi’s Motion to Dismiss at the conclusion of Karim’s case in chief, the Panel dismissed the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 10<sup>th</sup> causes of action of Karim’s Complaint on statute of limitations grounds and for failure to file any claim with the California DFEH. Therefore, there remain no statutory violations that would subject Citi to liability for attorney fees.

Karim is a forty-eight year old man of Pakistani descent. His religious affiliation is Muslim. In 2004, he became a Branch Manager in Citi’s Sherman Oaks branch. Throughout his employment, Karim signed or agreed to employment terms wherein he acknowledged and understood he was an “at-will” employee of the company. His performance over the years was generally good with him winning several awards, but he became somewhat less effective beginning in 2007 and continuing through 2009. During this period, Karim’s branch began to experience operational issues relating to dual control processes and ATM shortages as well as personnel issues. The evidence was not entirely clear as to what effect the recession in 2009 had on the branch’s performance. Karim’s strengths were in sales and personal relationships and this was expressly recognized by his area manager, Kathy Scott (“Scott”). He strongly believed in Citi’s policy of not giving “no” for an answer and doing whatever he could to help customers.

Karim developed a medical condition in 2009, but testified that this had very little, if any, impact on his job performance and there was no evidence to the contrary. He shared the fact of his condition with Scott. Karim also experienced other family problems from 2007 through 2010, including the death of his brother and a serious illness involving his son. He was seen and treated for other medical conditions during this time, prior to his transfer and prior to his termination in April 2010.

In approximately November 2009, Scott made the decision to transfer Karim from the Sherman Oaks branch to the North Hills branch. She did so based upon his performance, which was identified overall as “partially effective” in his 2008 and 2009 performance evaluations. She felt that the smaller North Hills branch would give Karim an opportunity to thrive because there was less staff to manage and he could focus on what he did best; interact with customers and drive sales and branch business. In the minds of management, they had lost “confidence” in Karim’s ability to effectively manage the Sherman Oaks branch. Karim did not share this belief and testified that Scott stated in a conversation they had that the transfer would be good for his medical condition because the North Hills branch was smaller and would be less stressful. Scott denied having said this and there was no corroborating evidence that this was part of the reason for Karim’s transfer. While Karim considered this a demotion, the evidence established he was earning the identical salary at a Level 1 branch and that he had the opportunity to earn as much if not more in bonuses.

The heart of the case centers on the *decision to terminate* Karim in late January 2010 for loan brokering and/or sharing allegedly confidential customer information with another Citi customer. Cilia Rodriguez was an Assistant Branch Manager in the Van Nuys branch and was assisting in the Sherman Oaks branch for a number of days when she came across what she thought were loan related files on Karim's desk that involved other banks. She reported this to her branch manager in the Van Nuys branch, Steven Weinstein and he felt duty bound to report this to his supervisor, Scott. In the process of investigating this, Scott came to learn that Karim had been assisting a customer in connection with what she thought was a property foreclosure. She did not know the details of this, but confronted Karim about it on approximately January 25, 2010. According to Scott, Karim admitted to providing an address of a customer to another Citi customer in order to help her with a property foreclosure. Scott immediately informed Karim that this was a "serious" situation in which she was "extremely concerned" and that she would need to look into. Scott openly acknowledged that Karim did not seem to understand or appreciate why he had done anything wrong or the magnitude of the situation.

From Karim's perspective, he was approached by a Citi customer, LW, in the Sherman Oaks branch who informed him that her house was foreclosed on and the bank was about to evict her. She asked if Karim could help her with an eviction and if he knew anyone that wanted to purchase a foreclosure that was interested in leasing the property to her so she could remain in the home. Karim said he would talk to someone he knew to see if he could help. He then called NM, a real estate agent and Citi customer from another branch. He informed NM that he had a customer that needed assistance with a real estate matter and asked if he could provide NM's number to this person. NM consented and within a day or so Karim called LW and gave her NM's phone number and told her that he may be able to help. LW testified that she called NM and he said he would contact the lender, Deutsche Bank to see what he could do. He did so and this staved off the imminent eviction. In the interim, relatives of LW's daughter's boyfriend expressed an interest in purchasing the property and she put them in touch with NM. These persons ended up purchasing the property and leasing it back to LW so that she could stay in her home, where she resides to this day. NM earned a commission in the sale and all of it was paid to LW over a one or two year period to cover the difference in rent she was able to pay.

The Citi policy prohibits Citi employees from divulging confidential customer information, including a customer's address or phone number with non-Citi employees, "except where permitted". Karim acknowledged knowing this policy, but did not think that what he did violated this policy. We agree since under the circumstances NM gave his express permission to share his phone number with LW. In this situation, the confidential customer information belongs to the customer, not Citi. No Citi policy was breached—especially in light of its express direction to its personnel to do everything possible to assist Citi customers—which is precisely what LW wanted and what NM was willing to do.

Karim testified that Scott suggested that he obtain LW's written consent to the disclosure of her information, a fact Scott denied. Karim did obtain a letter from LW, which she wrote on her own, in which she authorized Karim to share her personal

information, even though the only customer information Karim actually shared was NM's phone number.

In the face of Karim's admission that he shared one customer's cell phone number with another, Scott conducted a 30 minute telephone conversation with area operations manager, Lisa Delony ("Delony") and human resources person, Geri Mayo. During this conversation, which Delony did not recall, it was unanimously decided that what Karim did was a violation of Citi policy and that his employment with Citi would be immediately terminated. There was no formal investigation into precisely what information was disclosed to whom, whether consent was provided for the disclosure and whether the disclosure related to Citi business or whether Citi faced realistic legal exposure associated with the imagined privacy violation.

Citi pointed to several provisions of the *Code of Conduct* and its annual on-line intranet *Privacy Training* Karim took as proof of the violation and that Karim knew that what he had done was wrong. However, the language found in the *Code of Conduct* does not specifically identify the authorized sharing of this type of customer information as constituting an unauthorized disclosure of confidential information and the Privacy Training is only fifteen minutes in length and there was no evidence that it specifically covered this type of information under the circumstances here involved. The evidence supported Karim's assertion that he did not understand or appreciate that what he had done constituted a violation of Citi's customer confidentiality policy. He honestly felt that what he was doing was in the best interests of his customer as well as the company and violated no policy. He openly admitted that he sought to help LW by providing her with NM's telephone number. Moreover, page 6 of Citi's Code of Conduct, under the heading "Fair Treatment", states in part "Citi is committed to dealing fairly with its clients, suppliers, competitors and employees."

Thus, we find that Citi's decision to terminate Karim under these circumstances and without prior warning or progressive discipline short of termination constitutes an unfair, arbitrary and inappropriate employment practice. There was what can only be described as a rush to confirm that termination was authorized under Citi's privacy policies and no effort to understand what confidential information was disclosed, by whom and for what purpose. It was surprising that neither LW nor NM was contacted by Citi as part of the investigation even though Karim admitted to the sharing of information that was authorized. Further, neither Scott nor Delony sought the advice of Citi's legal or compliance departments. Moreover, the U-5 states that Karim was terminated for "sharing confidential information regarding a property foreclosure", when the foreclosure had undisputedly already taken place before LW sought Karim's assistance.

It was also problematic that Citi filed a declaration by Ms. Smith dated July 11, 2012 under penalty of perjury in the Los Angeles Superior Court stating that the reason for termination was for improper loan brokering. There was no explanation as to why this was identified as a reason for termination when Scott was clear in testifying that the sole reason for termination was the sharing of confidential customer information. Karim was a long time Citi employee who believed he could only be terminated if he had done something wrong. While there was little corroborating evidence that Citi acted in an overtly discriminatory or malicious manner, the quick decision to terminate without a

more thorough investigation as to policies that are subject to interpretation and not made clear to employees raises questions as to whether hidden discriminatory conduct was involved.

The termination process of Karim was in stark contrast to an *ethics hot line* investigation Citi undertook in December 2009 on Caesar Mencia, Assistant Branch Manager that admitted receiving a \$20,000 loan from a Citi customer. In that matter, without even investigating the terms of the loan, including the rate of interest or repayment conditions, the employee was only given a warning and reinstated to his former position. The facts of that case are far more egregious, from a banking standpoint, than those present here, yet the employee there received virtually no discipline. Karim deserved similar treatment, especially where Citi's own *Code of Conduct*, under the heading "Fair Treatment", emphasizes that "Citi is committed to dealing fairly with its clients, suppliers, competitors and employees."

In this case, the punishment did not fit the offense. Karim was not treated fairly or reasonably, which leads us to the ineffable conclusion that the specific reason for his termination was a "pretext" for unlawful discrimination, either because of his ethnicity, religion or disability. This caused the Panel to seriously doubt the integrity of Citi's policies, investigation and termination process. Accordingly, the Panel finds Citi liable for wrongful termination in violation of public policy.

### AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimant \$267,158.00 in compensatory damages for loss of earnings.
2. Respondents are jointly and severally liable for and shall pay to Claimant \$50,000.00 in compensatory damages for loss of future earnings capacity.
3. Respondents are jointly and severally liable for and shall pay to Claimant \$100,000.00 in damages for emotional distress.
4. Respondents are jointly and severally liable for and shall pay to Claimant costs in the amount of \$2,739.00.
5. Respondents are jointly and severally liable for and shall pay to Claimant the FINRA filing fee in the amount of \$200.00.
6. The Panel recommends modification of Claimant Shahid M. Karim's (CRD # 2982163) Form U-5, filed by Citigroup Global Markets, Inc. on May 24, 2010 and maintained by the Central Registration Depository ("CRD"). The Termination Explanation language in section 3 shall be expunged and replaced with the following language: "The initial termination of Karim for allegedly violating Citi Bank's privacy policy by sharing confidential information regarding a property foreclosure (non-

securities related) was found to be erroneous by a FINRA arbitration Panel in that Karim did not violate the bank's privacy policy." The Reason for Termination on Claimant's Form U-5 shall be changed to "other." These recommendations are made based on the defamatory nature of the information. These recommendations apply to any subsequent disclosures concerning the same event.

The Form U5 is not automatically amended to include the changes indicated above. Claimant must forward a copy of this Award to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the Form U-5.

7. Any and all relief not specifically addressed herein, including punitive and/or treble damages, is denied.
8. The Panel has provided an explanation of their decision in the award. The explanation is for the information of the parties only and is not precedential in nature.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim filing fee	=\$ 1,800.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal 4<sup>th</sup> 83 (2000), Claimant is assessed \$200.00 of the filing fee. The balance of the non-refundable portion of Claimant's filing fee, in the amount of \$400.00, is assessed to Citigroup Global Markets, Inc.

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Citigroup Global Markets, Inc. is assessed the following:

Member Surcharge	=\$ 3,750.00
Pre-Hearing Processing Fee	=\$ 750.00
Hearing Processing Fee	=\$ 5,500.00

#### **Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena	
(1) One arbitrator @ \$200.00	=\$ 200.00

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Total Contested Motion for Issuance of Subpoenas Fees	=\$ 200.00
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Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal 4<sup>th</sup> 83 (2000), the Panel has assessed \$200.00 of the contested motion for issuance of subpoenas fees to Citigroup Global Markets, Inc.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$	450.00
Pre-hearing conference: May 1, 2015		1 session
Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$	2,400.00
Pre-hearing conferences: September 19, 2014		1 session
March 17, 2015		1 session
Ten (10) Hearing sessions @ \$1,200.00/session	= \$	12,000.00
Hearing Dates: May 4, 2015		2 sessions
May 5, 2015		2 sessions
May 6, 2015		2 sessions
May 7, 2015		2 sessions
May 8, 2015		2 sessions
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Total Hearing Session Fees		= \$14,850.00

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal 4<sup>th</sup> 83 (2000), the Panel has assessed \$14,850.00 of the hearing session fees to Citigroup Global Markets, Inc.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.




**ARBITRATION PANEL**

Christopher L. Mass	-	Public Arbitrator, Presiding Chairperson
Mark S. Priver	-	Public Arbitrator
Richard J. Stall, Jr.	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Christopher L. Mass  
Public Arbitrator, Presiding Chairperson

6/15/15  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Mark S. Priver  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Richard J. Stall, Jr.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

June 15, 2015  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)

**ARBITRATION PANEL**

Christopher L. Mass	-	Public Arbitrator, Presiding Chairperson
Mark S. Priver	-	Public Arbitrator
Richard J. Stall, Jr.	-	Public Arbitrator

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**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Christopher L. Mass  
Public Arbitrator, Presiding Chairperson

*Mal S. Priver*

\_\_\_\_\_  
Mark S. Priver  
Public Arbitrator

\_\_\_\_\_  
Signature Date

*6/15/15*

\_\_\_\_\_  
Signature Date

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Richard J. Stall, Jr.  
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**ARBITRATION PANEL**

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Mark S. Priver	-	Public Arbitrator
Richard J. Stall, Jr.	-	Public Arbitrator

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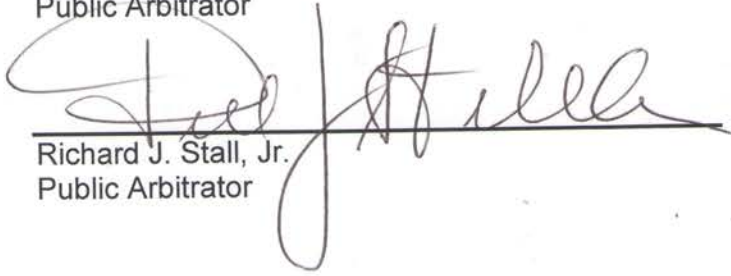
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Christopher L. Mass  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Mark S. Priver  
Public Arbitrator

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Signature Date

  
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